IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 785

EASTERN AIR LINES, INC., *Petitioner,*

v.

CIVIL AERONAUTICS BOARD, *Respondent.*

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MOTION OF DELTA AIR LINES, INC., TO BE NAMED AS A SPECIFIC PARTY RESPONDENT AND FOR LEAVE TO FILE BRIEF IN OPPOSITION

Delta Air Lines, Inc., (Delta) hereby respectfully moves that it be named as a specific party respondent in this case and for leave to file a brief in opposition to the petition for a writ of certiorari.

The interest and standing of Delta arises from the fact that it was a party to the proceeding below before the Civil Aeronautics Board (Board) wherein it was granted authority to engage in scheduled air transportation over certain routes in competition with Petitioner Eastern Air Lines, Inc. and already held authority to engage in scheduled air transportation over certain other routes for which the Petitioner unsuccessfully sought authority. Delta was also an intervenor on the side of the Board in the case below and participated

fully both on brief and in oral argument before the Court of Appeals for the Second Circuit wherein the Petitioner unsuccessfully sought to have set aside those portions of the Board's order[1] adverse to Petitioner and favorable to Delta.

Petitioner is requesting this Honorable Court to review and upon review to reverse the judgment of the Court below[2] upholding the validity of the Board's order which granted Delta favorable operating rights and denied Petitioner operating rights the grant of which would be adverse to Delta's interests. The issues of law and questions of fact raised by Petitioner directly involve Delta and accordingly, Delta has a substantial interest in the disposition of the petition for writ of certiorari.

Delta, as a party to the proceeding before the Board, as a recipient of substantial and favorable operating rights and as an intervenor in the case below would have standing to petition for a writ of certiorari under 28 U.S.C., § 1254(1) and 49 U.S.C. § 646(f) [now 49 U.S.C. § 1486(f)] in the event the Court of Appeals below had held adverse to its interest. Delta submits that it should have equal standing to defend its interests as a party respondent in the instant case where the decision of the Court below favorable to the interests of Delta is being attacked by an adverse Petitioner. Accordingly, Delta is a real party in interest and should have been named as a specific respondent in Petitioner's application to this Court for a writ of certiorari.

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[1] The opinion and order of the Civil Aeronautics Board appears at pp. 1313a-1400a of the printed joint appendix used in the Court of Appeals below.

[2] The opinion of the Court of Appeals is printed in appendix B of the Petition and is reported at 271 F. 2d 752.

On April 13, 1960, Delta filed a brief in opposition to petition for a writ of certiorari believing that it was, by reason of its participation as a party in the case before the Court below, an automatic respondent herein, the Court's rules being silent on the subject and a copy of the said petition having been served on it. Delta's said brief was timely filed and received under Rule 24 of this Court. A question has been raised in a companion Petition (No. 786) as to Delta's standing when not specifically named as a respondent herein, therefore, this motion is filed in an abundance of caution.

WHEREFORE, Delta Air Lines, Inc., respectfully requests that to the extent it is not a party respondent to this case by implication that it be named specifically as a party respondent and that the brief timely filed by it on April 13, 1960 in opposition to the petition for a writ of certiorari be received with respect thereto.

Respectfully submitted

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April 19, 1960.